

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

BERNARD JEMISON,

Plaintiff,

VS.

MICHAEL MITCHELL, et al.,

Defendants.

Case No. 2:09-cv-01035-CLS-HGD

MEMORANDUM OPINION

The magistrate judge filed a report and recommendation on September 16, 2009, recommending that this action be dismissed for failing to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1). The plaintiff filed objections to the report and recommendation on September 22, 2009. The plaintiff argues that, if given the opportunity through the special report process, he would be able to prove that defendant Mitchell was aware of the plaintiff's earlier lawsuit prior to his charging the plaintiff with a rules violation. However, as noted by the magistrate judge, the mere fact that a prisoner has previously filed a lawsuit does not alone infer a retaliatory motive on the part of prison officials, especially where, as here, the discipline is imposed for actual violations of rules. *See Orebaugh v. Caspari*, 910 F.2d 526 (8th Cir. 1990); *Riley v. Evans*, 41 F.3d 1507, 1994 WL 652778 *2 (6th Cir. Nov. 18, 1994).

Accordingly, having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the objections thereto, the court is of the opinion that the magistrate judge's report is due to be, and it hereby is, ADOPTED, and the recommendation is ACCEPTED. This action is due to be dismissed for failing to state a claim upon which relief can be granted, pursuant to 28 U.S.C. § 1915A(b)(1). A Final Judgment will be entered.

DONE this 19th day of October, 2009.



United States District Judge